

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

WILLIAM H. WRIGHT,

Petitioner,

v.

SAN JUAN COUNTY,

Respondent.

Case No. 14-2-0005

**DETERMINATION OF BOARD MEMBER
RAYMOND PAOLELLA IN RESPONSE
TO PETITIONER WILLIAM H. WRIGHT'S
MOTION TO DISQUALIFY BOARD
MEMBER**

On March 31, 2014, Petitioner William H. Wright filed a Motion to Disqualify Board Members William Roehl, Nina L. Carter, Ray Paoella, Margaret A. Pageler, and Cheryl Pflug. Under the rules, each Board member determines whether to grant the motion as to that individual Board member, stating the facts and reasons for the determination. The following statutes, rules, and legal authorities pertain to a motion for disqualification:

RCW 36.70A.270(8):

A board member or hearing examiner is subject to disqualification under chapter 34.05 RCW. The rules of practice of the board shall establish procedures by which a party to a hearing conducted before the board may file with the board a motion to disqualify, with supporting affidavit, against a board member or hearing examiner assigned to preside at the hearing.

RCW 34.05.425 (relevant portion):

- (3) Any individual serving or designated to serve alone or with others as presiding officer is subject to disqualification for bias, prejudice, interest, or any other cause provided in this chapter or for which a judge is disqualified.
- (4) Any party may petition for the disqualification of an individual promptly after receipt of notice indicating that the individual will preside or, if later, promptly upon discovering facts establishing grounds for disqualification.

(5) The individual whose disqualification is requested shall determine whether to grant the petition, stating facts and reasons for the determination.

WAC 242-03-570 (relevant portion):

(1) A motion to disqualify a board member from serving on a panel or to challenge the composition of the panel shall be brought at least seven days before the board holds a prehearing conference, or if facts establishing grounds for disqualification are subsequently discovered, promptly after discovery of such facts. In the event a new panel assignment is made during the course of the proceedings on a matter, any motion for disqualification or challenge to panel composition shall be brought no later than seven days after the board issues its notice of panel assignment.

(2) Any board member designated to serve on a panel is subject to disqualification for bias, prejudice, interest, or any other cause as provided in RCW 34.05.425. The board member whose disqualification is requested shall promptly determine whether to grant the motion, stating facts and reasons for the determination.

Code of Ethics for Board Members of the GMHB:

Board Members are subject to *disqualification* from proceedings (RCW 36.70A.270(8), RCW 34.05.425 and WAC 242-02-533 [now WAC 242-03-570]).

Self Interest A Board Member should consider stepping down (disqualify) from hearing a matter in which their impartiality might reasonably be questioned, including situations in which:

The Board Member has a personal bias or prejudice against a party, or when they have personal knowledge concerning disputed evidence.

The Board Member participated in the matter to be determined.

The Board Member or a close relative has a financial or other interest in the subject matter that could be substantially affected by the decision.

The Board Member or a close relative is a party or an officer, director or trustee of a party, or such relative is acting as a lawyer in the proceeding.

For the purpose of this section “close relative”, or disqualifying relationships, shall be spouse, ex-spouse, grandparent, parent, child, grandchild, sibling, parent’s sibling, or a sibling’s child.

Code of Judicial Conduct Rule 2.11(A):

A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge’s spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge’s spouse, domestic partner, parent, or child, or any other member of the judge’s family residing in the judge’s household, has an economic interest in the subject matter in controversy or in a party to the proceeding.

(4) [Reserved]

(5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer or a material witness in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

1 The above-quoted legal authorities in essence provide for the disqualification of a
2 Board member when the moving party adduces facts showing **bias, prejudice, interest, or**
3 **any other cause for which a judge is disqualified or where the judge's impartiality**
4 **might reasonably be questioned.**

5 Petitioner has not adduced any facts relating to me that show bias, prejudice,
6 interest, or any other cause for which a judge is disqualified. Petitioner has not provided
7 any facts indicating that my impartiality might reasonably be questioned. Petitioner has not
8 alleged the existence of any of the disqualifying circumstances listed in the GMHB Code of
9 Ethics nor in the Code of Judicial Conduct Rule 2.11(A).

11 Petitioner's motion contains conclusory assertions that appear to relate to
12 disagreements with the Board's substantive and procedural rulings in GMHB Case No. 13-
13 2-0012c. Furthermore, in the section of Petitioner's motion captioned "SUPPORTING
14 FACTS" there is no mention of my name and no specific evidence relating to me. After
15 considering all of the facts and evidence, I have concluded that there is no bias, prejudice,
16 interest, or any other cause for which a judge is disqualified, and there are no
17 circumstances where my impartiality might reasonably be questioned.

19 After reviewing the Motion to Disqualify Board Members and considering all of the
20 facts and evidence offered by Petitioner, and having applied all of the relevant statutes,
21 rules, GMHB Code of Ethics, and Code of Judicial Conduct to this matter, I must deny the
22 Motion to Disqualify Board Members as it pertains to me.

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25 DATED this 3rd day of April, 2014.

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Raymond L. Paolella, Board Member